

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TERESA BUTLER,

Plaintiff,

-against-

ORDER
CV 07-1472 (TCP)(ARL)

NASSAU REGIONAL OFF-TRACK BETTING
CORPORATION, et al.,

Defendants.

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LINDSAY, Magistrate Judge:

Before the court is the plaintiff's letter application dated November 27, 2007, seeking to lift the stay on discovery and to file an amended complaint. The defendant, Nassau Regional Off-Track Betting Corporation ("NROTB") opposes the application by letter dated December 3, 2007.¹ The defendant Board of Directors of Nassau Regional Off-Track Betting Corporation joins in the opposition of the NROTB. For the reasons set forth below, the plaintiff's motion is granted, in part.

By order dated August 2, 2007, the undersigned stayed discovery in this matter pending the state court's determination with respect to the late filing of the notice of claim. By order dated August 9, 2007, Justice Galasso granted the plaintiff's application to file a notice of claim *nunc pro tunc*. Notwithstanding the state court decision, the defendants argue that the stay should remain in effect because they intend to appeal the state court decision and to renew their motion to dismiss. The court will not stay discovery pending an appeal or determination of a motion to dismiss. Thus, the stay of discovery is lifted.

The court reserves its decision with respect to the plaintiff's request for leave to file an amended complaint. Although the application indicates that the complaint should be amended because "all procedural deficiencies are cured," the plaintiff has not attached a copy of a proposed amended complaint to the application. Accordingly, the court cannot render a decision with respect to the proposed amendment. The plaintiff is directed to serve the defendants with and to file a copy of the proposed amendment with the court by December 14, 2007. The defendants may submit any additional opposition to the motion to amend in a letter not exceeding three pages by December 19, 2007. The plaintiff may reply to the opposition to the motion to amend in a

¹The plaintiff has requested that the court reject the defendant's letter application because it exceeds the page limit set forth in Local Rule 37.3. Although the plaintiff is correct, the court will nonetheless consider the opposition given the fact that it is reserving decision concerning the amended complaint.

letter not exceeding three pages by December 24, 2007.

Finally, the plaintiff shall appear for an examination to answer questions with respect to her claims. At this point in the litigation, it is irrelevant whether that examination is being conducted pursuant to § 514(4) of the Racing, Pari-Mutuel Wagering and Breeding Law, §50-h of the General Municipal Law, or Rule 30 of the Fed. R. Civ. P. However, the court will not require the plaintiff to be examined twice. Accordingly, the defendants may notice the plaintiff for a hearing/deposition prior to receipt of the court's ruling on the amended complaint or they may choose to wait to examine the plaintiff after the court has rendered its decision.

Dated: Central Islip, New York
December 10, 2007

SO ORDERED:

_____/s/_____
ARLENE R. LINDSAY
United States Magistrate Judge